

DOCKETED

Docket Number:	00-AFC-14C
Project Title:	El Segundo Power Redevelopment Project Compliance
TN #:	206484
Document Title:	Transcript of 10/21/15 Prehearing Conference
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	11/2/2015 10:32:08 AM
Docketed Date:	11/2/2015

In the Matter of:)
)
THE EL SEGUNDO ENERGY CENTER)
AMENDMENT) Docket No. 00-AFC-14C
)

CALIFORNIA ENERGY COMMISSION
CHARLES R. IMBRECHT ROOM
(HEARING ROOM B)
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

1

APPEARANCES

COMMITTEE:

Karen Douglas, Commissioner, Presiding Member

Janea Scott, Commissioner, Associate Member

HEARING OFFICER:

Raoul Renaud, Hearing Officer:

ADVISERS:

Jennifer Nelson, Adviser to Commissioner Douglas

Le-Quyen Nguyen, Adviser to Commissioner Douglas

Courtney Smith, Adviser to Commissioner Scott

Rhetta deMesa, Adviser to Commissioner Scott

STAFF:

Eileen Allen,

Elena M. Miller, Senior Staff Counsel

Camille Remy-Obad, Project Manager

Kristy Chew

APPLICANT:

John A. McKinsey, Locke Lorde, LLP

George L. Piantka, NRG Energy

PUBLIC ADVISER'S OFFICE:

Alana Mathews

I N D E X

	Page
Meeting Agenda	
1. Call to Order: Introductions	4
2. Report from Petitioner, Staff and Intervenor(s) regarding their readiness for the upcoming Evidentiary Hearing, proposed testimony and witnesses; Committee discussions with the parties about the order of topics, use of informal and formal procedures, and other matters in preparation for the Hearing	5
--	
3. Public Comment	42
4. Closed Session (if necessary)	--
Committee Closed Session consideration of the following Item:	
PETITION TO AMEND THE EL SEGUNDO ENERGY CENTER	
Adjournment	43
Court Reporter's Certificate	44
Transcriber's Certificate	45

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

OCTOBER 21, 2015 2:02 p.m.

COMMISSIONER DOUGLAS: Welcome to this
Prehearing Conference for the El Segundo Energy
Center. Before we begin I'd like to introduce the
Committee and then ask the parties to introduce
themselves for the record.

So I'm Commissioner Karen Douglas, I'm a
Presiding Member of the Committee. On the left of the
Hearing Officer is Commissioner Janea Scott, she's
the Associate Member of the Committee. Raoul Renaud,
the Hearing Officer, is to my left. And Commissioner
Scott's Advisers, Courtney Smith and Rhetta deMesa,
are to her left. To my right are my advisers,
Jennifer Nelson and Le-Quyen Nguyen.

So let's see, the Public Adviser's Office,
Alana Mathews, is here. And could we get the
Petitioner to introduce yourselves?

MR. MCKINSEY: John McKinsey, Counsel for the
Project Owner and Petitioner, El Segundo Energy
Center, LLC. And with me is George Piantka from NRG,
the parent company and representing El Segundo.

COMMISSIONER DOUGLAS: Thank you very much.
And staff go ahead.

MS. MILLER: Elena Miller, Senior Staff
CALIFORNIA REPORTING, LLC
52 Longwood Drive, San Rafael, California 94901 (415) 457-4417

1 Attorney with the Chief Counsel's Office of the
2 Energy Commission and Ms. Camille Remy-Obad, our
3 Project Manager.

4 COMMISSIONER DOUGLAS: Thank you.

5 Are either of the Intervenors on the phone
6 or in the room today: Michelle Murphy and Bob
7 Perkins?

8 MR. MCKINSEY: Commissioner, I don't think
9 we have any Intervenors.

10 COMMISSIONER DOUGLAS: Do we not --

11 MR. MCKINSEY: I don't think they petitioned
12 to intervene in this (indiscernible)--

13 HEARING OFFICER RENAUD: They did and we
14 granted the petition, but they haven't participated.

15 COMMISSIONER DOUGLAS: Okay. Well, in any
16 case they're not on the phone or in the room it
17 appears. Are there any elected officials or
18 representatives or government agencies on the phone
19 or in the room?

20 All right, in that case I will turn this
21 over to the Hearing Officer. Thank you.

22 HEARING OFFICER RENAUD: Okay. Thank you,
23 Commissioner Douglas.

24 The Committee Noticed today's Prehearing
25 Conference in a Notice that was issued on September

1 23rd, which also contains Notice for the Evidentiary
2 Hearing, which is scheduled for November 17th and
3 will take place in El Segundo.

4 As explained in the Notice, our purpose
5 today is to assess the parties' readiness for the
6 Evidentiary Hearing, to clarify any areas of
7 agreement or dispute, to identify witnesses and
8 exhibits, determine upon which areas parties desire
9 to cross-examine the other parties' witnesses and
10 discuss any other procedural matters that come up.

11 So we asked that the parties submit
12 Prehearing Conference statements by October 19th.
13 And thank you Petitioners, thank you staff, for
14 filing very complete, informative and timely
15 Prehearing Conference statements, very much
16 appreciate that.

17 We did not receive filed testimony or a
18 Prehearing Conference Statement from the Intervenors.
19 And so I assume they do not intend to participate,
20 either today or in the Evidentiary Hearing.

21 Staff published a Final Staff Assessment,
22 the FSA, on August 27, 2015. Staff's opening
23 testimony includes the FSA and the identification of
24 additional witnesses in three subject areas, which --
25 and it was filed on October 12th and has been marked

1 for identification as Exhibit 2000.

2 The South Coast Air Quality Management
3 District FDOC, Final Determination of Compliance, has
4 been marked by staff for identification as Exhibits
5 2002, 2003 and 2004.

6 I did notice a -- what may be a discrepancy
7 between the numbering there and numbering in the
8 rebuttal testimony. And let me just pull that up and
9 make sure we get that sorted. Well, I made a note to
10 myself about that, but I don't actually see that
11 issue at this point. If I come across it I'll let you
12 know. I think it's a minor administrative detail we
13 can deal with at any time.

14 UNIDENTIFIED FEMALE: We will check that.

15 Okay. Good. We do ask that staff arrange for
16 a representative of the South Coast Air Quality
17 Management District to be available to authenticate
18 the FDOC at the Evidentiary Hearing on November 17th.
19 That can be done by telephonic testimony; they need
20 not be present.

21 The Water Supply Assessment Letter from the
22 City of El Segundo Public Works Department, which is
23 Transaction Number 203598. And the Coastal Commission
24 Letter Transaction Number 203459 should also be added
25 to staff's exhibits, if you would, please.

1 UNIDENTIFIED FEMALE: Certainly.

2 HEARING OFFICER RENAUD: All right, good.

3 Opening testimony was filed by the
4 Petitioner on October 12th and has been marked for
5 identification as Exhibits 1000 through 1040. It was
6 interesting to the Committee that you included
7 testimony on the use of clutches on generation
8 equipment even though that was not part of the
9 original AFC or the Petition to Amend.

10 Staff filed rebuttal testimony on October
11 16, 2015 and that addresses the new clutch testimony
12 as well as some issues on air quality, contingency
13 conditions of certification, compliance conditions of
14 certification and hazardous materials management. And
15 so we will go into a little more detailed discussion
16 of the evidentiary filings and then any issues
17 shortly. Okay.

18 So first we will discuss the prehearing
19 Conference statements. Then we'll go into exhibit
20 lists and witness lists. And finally we'll discuss
21 whether or not a briefing schedule would be necessary
22 and then provide an opportunity for public comment.
23 And also an opportunity for a closed session, if the
24 Committee so wishes.

25 All right, any questions about any of that?

1 We're good, okay. All right.

2 Now, on the Prehearing Conference statements
3 I've made notes to myself of some of the topics that
4 look like we ought to talk about. And as I was
5 reviewing them today I was thinking, "Well, how come
6 I have them in the order I have them?" And I realized
7 that I kind of started by looking at staff's rebuttal
8 testimony and then kind of went from there. So if
9 you're looking for any rhyme or reason as to the
10 order in which I'm bringing these things up that's
11 probably the closest you're going to find, all right.

12 So the first is the clutch technology. Now I
13 suspect, Mr. McKinsey, that you raised that because
14 it was raised in another proceeding recently from
15 which you were -- in which you participated. And we
16 actually appreciate your offering that in kind of a
17 preemptive manner. At this time I think it's good to
18 have it in the record, we're not sure we're going to
19 need it, but it's good to have it there.

20 I wonder if each party could just briefly
21 summarize the testimony and whether or not you each
22 find that there are conflicts in the testimony that
23 the Committee will need to resolve. There is a
24 proposed Condition of Certification CONTINGENCY-3,
25 which would allow or require that clearance be

1 allowed for future clutch installation on the two
2 simple cycle units. And so, if you would also include
3 that in your discussion as to whether or not that is
4 acceptable to both parties, and if not what are the
5 issues.

6 We'll start with Mr. McKinsey.

7 MR. MCKINSEY: Thank you. I think largely, in
8 looking at the staff's testimony that the staff and
9 the Project Owner are on almost the same page about
10 the value of clutches, the current understanding that
11 there is nobody asking for them to be installed at
12 the site.

13 And I think the only difference I perceive,
14 and I'm not certain that I understand it completely,
15 comes from the way that the staff proposed some
16 revisions to the CONTINGENCY-3 in the rebuttal
17 testimony. That what was proposed by the Project
18 Owner was that the Project Owner would evaluate prior
19 to designing the project, presumably followed along
20 with some type of a procurement contract, whether or
21 not they would design and include clutches at the
22 time that they were designing the project
23 (indiscernible)

24 The revisions to CONTINGENCY-3 actually
25 require, the way you worded it, which is that the

1 project will be designed to facilitate if possible
2 some future installation of the clutch. But the
3 decision about whether or not to install the clutch
4 could be made then or could be made at any point in
5 the future without having to come back and petition
6 again.

7 So the latter part of that think is okay.
8 The issue is that the idea that we can design
9 something now without a specific product available is
10 clearly problematic.

11 In other words, if there was a product that
12 was coming during the procurement of the power train
13 they would specify this is the design of the staff,
14 this is the spacing, this is the distance. And so we
15 could take say the current availability for the unit
16 and match the design in that manner. But that would
17 naturally ensure that five or ten or twenty years
18 later there would be the same design available, the
19 same clutch with the same spacing requirements.

20 So that's one issue about whether or not the
21 Project Owner would be able to say they've actually
22 done that. The other concern is that going to the
23 OEM, the Original Equipment Manufacturer now, and
24 saying, "Well, we want you to provide us this
25 equipment, but without the clutch, but designed for

1 the clutches right now," that they may or may not be
2 willing to guarantee that.

3 So right now the way CONTINGENCY-3 reads it
4 says, "You will design it to include the spacing
5 available for a clutch," but it doesn't -- that may
6 not be doable, because we may not be able to get the
7 shaft as part of that, that would come with the
8 warranty on the package.

9 And so at a minimum we think there has to be
10 some type of an out if the product -- if that power
11 train is not procurable in that arrangement as part
12 of -- without the clutch. In other words if it comes
13 with it, with all the other design aspects of the
14 clutch, the distance between the generator and the
15 turbine and the nature of the shaft -- then that
16 becomes the primary aspect.

17 So we have a problem still with the way it's
18 worded now, but I'm not convinced that by talking to
19 staff we can't find some common language, because I
20 think that's the only area that we really disagree on
21 in ultimately almost all our testimony about this
22 about this (indiscernible)

23 HEARING OFFICER RENAUD: Staff?

24 MS. MILLER: Thanks. So staff worked on this
25 issue last week --

1 UNIDENTIFIED MALE: (Indiscernible)

2 MS. MILLER: Staff worked on this issue and
3 did an expedited review from Monday when Project
4 Owner's testimony was filed until Rebuttal was due on
5 Friday.

6 And I agree with Mr. McKinsey that in much
7 of the reply or rebuttal provided by staff there is a
8 great deal of (indiscernible) in CONTINGENCY-3, which
9 we received for the first time on the 12th.

10 Staff proposed revisions in their rebuttal
11 and in Prehearing Conference Statement acknowledge --
12 so I'm agreeing with you, Mr. McKinsey, that we think
13 that with some additional discussion we might be able
14 to work these issues out that are not so much areas
15 of disagreement, but perhaps areas of
16 misunderstanding.

17 HEARING OFFICER RENAUD: Great. Yeah, that's
18 kind of the way it looked to me as well.

19 I'm going to suggest since the Evidentiary
20 Hearing is not until November 17th that any issues
21 like this that we encounter today where, you know, it
22 looks feasible for you to come to agreement that we
23 consider scheduling a workshop between now and then.
24 At which the -- and Noticing a public workshop in
25 other words -- at which these issues could be

1 discussed. How does that sound?

2 MR. MCKINSEY: I was assuming that we could
3 simply discuss them a little bit --

4 HEARING OFFICER RENAUD: Here today?

5 MR. MCKINSEY: -- or even at any point. I
6 think as parties that we can -- we're not subject to
7 like the public notice ex parte rule. We're
8 discussing our positions relative to the testimony,
9 so I was assuming we would simply have a conversation
10 at this point.

11 HEARING OFFICER RENAUD: I'll let you proceed
12 in however you've been proceeding in that case, but
13 if you feel the need to do this in a public setting
14 feel free to Notice a workshop.

15 MS. MILLER: I think that in this case we
16 have been able to use the docket when there was any
17 doubt to communicate between the parties. And I am
18 happy for us to continue on that path for this issue.

19 HEARING OFFICER RENAUD: Great, so any
20 discussions you might have would be memorialized and
21 docketed in other words?

22 MS. MILLER: We can do that. In our
23 Prehearing Conference Statement what we said was that
24 we would -- staff would consider any additional
25 language proposed by Project Owner. And so that is

1 certainly, I think, a good place to start.

2 HEARING OFFICER RENAUD: Great. Okay,
3 terrific.

4 MR. MCKINSEY: I had one other question too?

5 HEARING OFFICER RENAUD: Yeah.

6 MR. MCKINSEY: As you noted we proposed this
7 testimony in response to the fact that clutch
8 technology had come up in a recent proceeding and so
9 this was our effort to try and avoid any issues
10 before this one ends up before the full Commission.
11 And so it's a little odd in the way in which we did
12 it. It was the only way we could think of doing it.

13 It would also be useful to know whether
14 prior to the -- and maybe we could get that answer
15 today -- whether the Committee is going to be fine
16 with just the written testimony or whether they're
17 going to have a desire to have any Q & A with the
18 witnesses.

19 Because assuming that we reach agreement on
20 the Contingency addition, I think at that point we
21 would assume we're not going to need to provide any
22 witnesses. Although we certainly could since this is
23 kind of an issue of first impression if the Committee
24 doesn't think they have enough to be able to provide
25 a proposed decision regarding clutches. We can still

1 provide that essentially to give the Committee a
2 chance to ask more specific questions at the
3 (indiscernible)

4 HEARING OFFICER RENAUD: I'm going to see if
5 our Commissioners want to comment on that, but I can
6 say that what was submitted in the file testimony, it
7 looks pretty thorough to me, but Commissioner
8 Douglas, perhaps? No?

9 (No audible response.)

10 No, it doesn't sound like that will be
11 necessary. What you filed appears to cover the LORS
12 pretty well. Commissioner Scott?

13 (No audible response.)

14 Okay. All right, good.

15 Next, I looked at a Condition of
16 Certification for Air Quality, which is AQ-33. And
17 that looks like -- let's see, that there are
18 references in that COC to AQ-72 and 73 for Testing
19 Requirements for VOC Compliance. And staff is
20 indicating that the testing requirements ought to be
21 those specified in AQ-7.

22 Is that -- any response to that from
23 Petitioner?

24 MS. MILLER: I'd like to say that I know in
25 their Prehearing Conference Statement that they were

1 unsure of what other issues there might be. And so I
2 want to clarify that we were just seeking agreement
3 from them. So to recap we agreed with their
4 testimony, but we proposed edits to or revisions to
5 AQ-33. And so if we have agreement from the Project
6 Owner to our edits then I think the parties are in
7 agreement and that there are no other air quality
8 issues.

9 MR. MCKINSEY: And that's correct. And we
10 (indiscernible) changes on AQ-33 and so staff and the
11 Project Owner are in agreement on those Conditions of
12 Certification with the testimony (indiscernible)

13 HEARING OFFICER RENAUD: And how about the
14 issue on construction hours: 16 hours versus 8 hours
15 a day? That came up, I noticed, too.

16 MS. MILLER: Well, I will say that I brought
17 that up in our Staff's Prehearing Conference
18 Statement. And I believe that that is an issue that
19 staff and the Project Owner have discussed, but to
20 date there hadn't been anything in the record. And so
21 I in an abundance of caution, wanted to bring that
22 issue to the Committee's attention.

23 HEARING OFFICER RENAUD: Good. That's what
24 we're here for.

25 MR. MCKINSEY: Yeah. And that memorialized, I
 CALIFORNIA REPORTING, LLC
 252 Longwood Drive, San Rafael, California 94901 (415) 457-4417

1 think, our understanding exactly what was in the
2 project description, so we don't have any issues with
3 it.

4 HEARING OFFICER RENAUD: So the 8 hours is
5 the number?

6 MR. MCKINSEY: Correct.

7 HEARING OFFICER RENAUD: All right, great.
8 Okay. Moving on, we've got CONTINGENCY Conditions of
9 Certification 1, 2 and 4. These are the conditions
10 that govern the demolition and removal of Units 3 and
11 4. And Petitioners expressed some concern that these
12 conditions hadn't appeared in the PSA or prior parts
13 of the FSA.

14 Regardless, I think it's an important area
15 to get sorted out. And as far as I can tell the
16 dispute really seems to be over whether or not to
17 require a fixed time table for doing that work, the
18 demolition and removal, or to have that basically
19 contingent on the construction schedule and
20 presumably on the PTA.

21 MR. MCKINSEY: Thank you. The issue we have
22 is suppose that this project is not built, so it
23 never receives a contract and Units 9 through 12 are
24 not constructed. The way that the Contingency
25 Conditions are set up is that Units 3 and 4 will be

1 demolished anyway and the land remediated to some
2 level or condition. That is a pretty significant
3 problem from a business perspective.

4 And really it's almost a problem for the
5 ability of the Project Owner to accept a decision in
6 that -- on this in that manner, because it would
7 basically mean that as soon as the decision took
8 affect that the property would now basically have a
9 burden that would have to be assigned to it, which is
10 the cost of the demolition or decommissioning.

11 And so that would apply, in theory, to the
12 only operating assets at the site, which would be the
13 existing units. And the existing units don't have any
14 such provision in them to pay for that. So that's why
15 it could actually force a withdrawal of the Petition
16 to Amend although I don't think anybody has made that
17 decision yet. But that's how serious it could be.

18 And that's -- you know, the way we worded it
19 was to be -- you know, it was the idea that this is a
20 single project that has been proposed. So it takes
21 the demolition of 3 and 4 as part of a repowering.
22 And we didn't submit two projects: one demolishing 3
23 and 4. And then if we get the contract or otherwise
24 the financial ability to do so, the building of these
25 other units that will replace them.

1 So that's really the issue we have is this
2 mandated -- not really the schedule per se -- but the
3 mandate that with this decision the Project Owner now
4 has to demolish 3 and 4 pursuant to this
5 (indiscernible) as opposed to most of the projects,
6 you know, under the Warren-Alquist Act got three
7 years to implement a decision. And there are
8 certainly many projects that end up never getting
9 implemented.

10 This is all the more complicated, because
11 it's an amendment to an existing facility. So we
12 interpret this as something that amends the Energy
13 Commission's jurisdiction on the site. That right now
14 3 and 4 are units that -- and their land is operated
15 by a different entity and are somewhat outside of the
16 Energy Commission's jurisdiction and are in the City
17 of El Segundo, Costa Mesa jurisdiction.

18 And this would facilitate this decision
19 moving 3 and 4 -- that they will stay in their --
20 under Energy Commission's jurisdiction, so they can
21 then be demolished and we can select new units, which
22 (indiscernible) And so it's at that point, make the
23 entire site, a site under the Energy Commission's
24 jurisdiction.

25 Right now there's much more ambiguity about

1 where that line is crossed between 3 and 4, the old
2 units that were there prior to the Energy Commission.
3 And the new units, which are clearly in the -- the
4 clutching site, which is clearly under the Energy
5 Commission's jurisdiction.

6 HEARING OFFICER RENAUD: All right,
7 Ms. Miller?

8 MS. MILLER: Mr. McKinsey has brought up some
9 new issues that I don't think have been known to us
10 in the past, new concerns.

11 Staff agreed with much of the testimony
12 provided on this issue of CONTINGENCY-1 and even the
13 proposed a revision in response to a request for more
14 time. It's a 30-day requirement and proposed 60 days
15 instead.

16 I was hoping to hear today that that would
17 be agreeable for the Project Owner, but again I've
18 heard some new issues. And I have to respond to those
19 new issues.

20 MR. MCKINSEY: Yeah, the CONTINGENCY-1, the
21 30-60 day difference is less of an issue. It's not
22 the major kind of issue, because that's the condition
23 that says you will prepare a plan that explains how
24 you're going to do it.

25 It's CONTINGENCY-2, which requires doing it.

1 And it also says you will do it within a certain
2 amount of time from the plan. And it's not really the
3 amount of time; it's that CONTINGENCY-2 is the
4 condition that requires Unit 3 and 4 be demoed
5 regardless of what happens with plans to build the
6 project.

7 I think -- I'm not really up on, you know,
8 the issue. And the resolution on CONTINGENCY-1 really
9 (indiscernible) in terms of the number of days to
10 prepare a plan. But it's really CONTINGENCY-2 where
11 the source of the issue is.

12 HEARING OFFICER RENAUD: So to summarize it,
13 it sounds to me like the Petitioner is saying that
14 the 30 to -- or 60 days, whatever, timeframe is not
15 really the issue. The issue is that they not be
16 required to commence that work until it's a certainty
17 that the new project will be built, that is that the
18 new units will be added too.

19 MR. MCKINSEY: Okay. That's the most
20 significant part, sort of in the conditions, is that
21 CONTINGENCY-2 mandates demolition of 3 and 4
22 regardless of any other outcome.

23 We had some wording issues within
24 CONTINGENCY (indiscernible) also that I think are
25 resolvable. There's some language that says, "The

1 Project Owner shall get all necessary permits." And
2 normally, what you have is you have a project that's
3 submitted. And in fact, you do, because the
4 demolition of 3 and 4 was included in the project, so
5 there's a listing of all the permits that could be
6 required, but for the Energy Commission's exclusive
7 jurisdiction. And then there's a list of permits that
8 are required -- usually the federal permits that the
9 Energy Commission's jurisdiction doesn't replace.

10 So there's already an established decision
11 in that document that says -- or the record that says
12 here are the necessary permits. But they're -- and
13 they would largely be the Clean Water Act and the
14 Clean Air Act-related permits from the Air Board,
15 Water Board and perhaps Army Corps related to
16 demolition that would be outside the Energy
17 Commission's jurisdiction.

18 So that language could get a little scary in
19 a financing perspective even if it's still in there,
20 but does not mandate a required thing. Because really
21 we think it should say either -- usually what the
22 Energy Commission does is if they're concerned about
23 a permit they (indiscernible) simply say, "Prior to
24 commencing demolition you will have this permit in
25 hand."

1 So that language was a little bit vague to
2 us. Again that was something I was certain we could
3 work out with staff, was really the component of 2
4 mandating 3 and 4 be demolished that was the problem
5 -- that could really be a problem.

6 HEARING OFFICER RENAUD: Staff, does this
7 sound like something that you might be able to
8 discuss further with Petitioner and distill it?

9 I mean, I understand what they're saying,
10 which is basically they don't want the demolition to
11 have to take place if the project itself doesn't
12 proceed.

13 I mean, I can understand what they're
14 saying, but it sounds as though you need a little
15 more opportunity to review and consider this. It's
16 kind of -- it's just it's brand new in other words,
17 right?

18 MS. MILLER: Well, we've had a week since we
19 received testimony. And we saw this condition. Well,
20 we saw the response to the condition, Contingency
21 Condition for 2. It sounds like we have less work to
22 do on CONTINGENCY-1. It sounds like our issues
23 largely of disagreement are focused on CONTINGENCY-2.

24 As to your first question, is this an area
25 that the staff is willing work with Project Owner on,

1 we are happy to have the time to look at this some
2 more. But I know that my client, having written
3 CONTINGENCY-2, has a difference of opinion on this
4 issue of demolition from the Project Owner. And that
5 difference of opinion and the necessity and the
6 inclusion of demolition in this project description
7 may end up being a matter of disagreement. But that
8 doesn't mean that we can't discuss this.

9 HEARING OFFICER RENAUD: Okay. Thank you for
10 that.

11 Mr. McKinsey, are you looking at conditions
12 in the original decision that you're referring to or
13 the --

14 MR. MCKINSEY: CONTINGENCY-1 and 2 were
15 proposed in the final combined FSA Part A, Part B.

16 HEARING OFFICER RENAUD: Right, yes. But I
17 believe I understood you to be referring back to the
18 decision that you're seeking to amend, which would
19 actually be the very old 2005 decision. Were you
20 referring to any conditions in there that you think
21 could apply here?

22 MR. MCKINSEY: No.

23 HEARING OFFICER RENAUD: No, all right.

24 Okay. Well, I guess the Committee will
25 encourage the parties to continue to look at this and

1 we'll take it up at the Evidentiary Hearing if
2 necessary. Okay, good.

3 Okay. Let's then look at in the Compliance
4 Conditions of Certification on COM-10 and COM-11 it
5 looks like there's agreement on those. Staff agrees
6 with the Petitioner suggested changes.

7 MS. MILLER: That's correct

8 HEARING OFFICER RENAUD: So we're good there.

9 And then on COM-12, which is the Emergency
10 Response Site Contingency Plan perhaps we could hear
11 summary from each party as to the issue that we're
12 looking at there, please.

13 And if talking about COM-13 at the same time
14 would be productive, go ahead and do that too.

15 MR. MCKINSEY: The issue I know we have is
16 still in 12 and 13 though we've had several
17 discussions about these over the last several days
18 since we got the Prehearing Conference Statement.

19 (Intermittent audio issues.)

20 And so I'm not certain (indiscernible) find
21 themselves able to, but to me there's some things in
22 12 and 13 that could be spelled out in the testimony
23 that make us nervous. But on the second hand, this
24 may be one of those things again we simply don't want
25 to drag out into a longer battle at the Evidentiary

1 Hearing. And I think (indiscernible) directing staff
2 on it may help.

3 Part of the issue in (indiscernible) these
4 are a little -- they're generally new in their
5 entirety (indiscernible) in the decision making. And
6 so it's harder when you go to compliance people and
7 say, "Can you adhere to this? Can you meet this
8 timing requirement for how fast you have to -- say
9 within one hour." And if we think we can't meet that
10 then -- and that's what we said, that we're concerned
11 that we may not be able to meet the one-hour
12 reporting during an incident requirement. And if so,
13 then we would be in violation, so we need to raise
14 that now as something (indiscernible) agree.

15 That actually is helpful in and of itself if
16 that's in the record, that time that the condition is
17 being imposed if the decision is noting that the
18 Project Owner was concerned about their ability to do
19 that. And then there is an enforcement action on that
20 condition say in the future when an incident occurs
21 if you have something in the record, which helps show
22 either good faith or how exactly that was being
23 interpreted as (indiscernible) allowable excuse for
24 not having met the one hour -- that kind of thing.

25 So that's -- it's an area that this is a

1 very new condition and we're trying to sort our way
2 through it. But we may still either come to accept
3 the (indiscernible) for now, but we may still want to
4 make comments on the proposed decision, for instance,
5 that emphasize exactly how we're interpreting some of
6 the meaning in the language in there. And that might
7 get us through as well or we might be able to reach
8 agreement on adjusting the language.

9 Though I think the staff got a chance to see
10 our testimony and probably agree with us on 10 and
11 11, but not on 12 and 13. So mostly that suggests the
12 ball's in our court to either find that we can accept
13 it with some stuff in the record about what we think
14 the wording is or ask the Committee to adjust
15 (indiscernible)

16 HEARING OFFICER RENAUD: Great, thank you.

17 Ms. Miller?

18 MS. MILLER: Thank you. So with COM-12, I
19 agree. I think that the ball is in Project Owner's
20 court. Thank you for the acknowledging that, Mr.
21 McKinsey.

22 Staff didn't agree, and in fact objected,
23 but the proposed revisions in (indiscernible)
24 acknowledge the staff in our Prehearing Conference
25 Statement. And so Mr. McKinsey, that's in your court

1 as we'll wait to hear from you on what your thoughts
2 are on that.

3 And then with COM-13 staff again objected,
4 but we were pleased to see that the Project Owner
5 acknowledged that they believe agreement can be
6 reached. And that was stated in their Prehearing
7 Conference Statement.

8 So with that I think that this sounds like
9 an area that we might be able to make some progress
10 on, on these two Conditions of Certification. And I
11 think we'll be able to do so.

12 HEARING OFFICER RENAUD: Okay, great.

13 MR. MCKINSEY: Yeah, part of the issue I
14 think is just the speed at which we went from -- we
15 had the rebuttal testimony last week. And so these
16 are -- you don't just go to a project response
17 engineer and say, "Is this good?" And I kind of have
18 to talk through (indiscernible) things on it and how
19 their interpretation, so we can think
20 (indiscernible). And so that's where we noted that we
21 want to reserve the ability to present testimony if
22 necessary to go forward.

23 MS. MILLER: Agreed.

24 HEARING OFFICER RENAUD: Okay, great. That
25 sounds perfectly manageable for the Committee to deal

1 with at Evidentiary Hearing if we need to and we
2 might not have to, all right.

3 MR. PIANTKA: Hi, George Piantka with the
4 Project Owner.

5 You know, I think one thing in looking at
6 COM-12 -- and this is something that will lead right
7 into some dialogue with staff on it -- is there is a
8 Worker Safety-1 and then there's what's proposed in
9 COM-12. And we think there's -- perhaps both those
10 conditions have a lot of similarities in it. And it's
11 not trying to avoid the plan, but I think it's also
12 important staff clarify the intent of both of those
13 plans, so that there isn't two redundant plans or one
14 plan can refer to the other. So I really look at that
15 as something that we can work through, you know,
16 through discussion.

17 And also with COM-13 it's not about
18 unwillingness to communicate and including
19 communicate (indiscernible) staff has put into COM-
20 13. It's not our intent not to be able to communicate
21 issues with the facility, you know, in this case also
22 with the Energy Commission. But there's some of the
23 particular provisions in it that we want to look a
24 little more closely at, some of the actual scenarios,
25 the dispatch scenarios that were outlined.

1 So I think we just need to spend a little
2 more time internally and then we can (indiscernible)
3 is needed. And then (indiscernible)

4 MS. MILLER: I agree. Thank you, Mr. Piantka.
5 And staff in their rebuttal did acknowledge the link
6 now that we've identified it, between COM-12 and
7 Worker Safety-1. And addressed that, but addressed it
8 in the matter of a sentence. So I think that a
9 conversation could certainly be built upon that one
10 sentence with staff and Project Owner.

11 HEARING OFFICER RENAUD: Okay. That sounds
12 good. I agree that we had a rather rapid fire
13 exchange of testimony and so on over the past several
14 days. So fortunately, there's now about three weeks
15 until the Evidentiary Hearing. So we can relax a
16 little bit and look into these things a little more
17 deeply, okay?

18 MS. MILLER: Mm-hmm.

19 HEARING OFFICER RENAUD: Thank you.

20 All right. Now, I next have on my list an
21 issue in Hazardous Materials Management, specifically
22 Condition HAZ-5. And there was a question whether the
23 Security Plan would be required 60 days prior to the
24 start of construction or 60 days after the petition
25 to begin is approved. Is that still an issue or have

1 you come to a consensus on that?

2 MS. MILLER: I believe we have a consensus
3 (indiscernible)

4 MR. MCKINSEY: Yeah. In fact, we both consent
5 to two other topics of biology and cultural. We
6 actually didn't have any issues. I think all of these
7 are leftover from comments that we have made on the
8 FSA A, Part A. That basically staff didn't agree with
9 us and we didn't confront them and we've come to
10 accept what's being proposed by the staff.

11 But we weren't certain either, because all
12 we could see was the staff saying, "We've got
13 issues." But the Prehearing Conference Statement
14 clarified, for us, that these -- all three of these
15 topic areas actually we don't have any issues.

16 HEARING OFFICER RENAUD: All right.

17 MS. MILLER: That's great, thank you. Again,
18 I said it earlier and I'll say it again, I
19 (indiscernible) these issue were brought up, because
20 we didn't have workshops. We wanted to make certain
21 that these issues were resolved and it sounds like
22 they were.

23 HEARING OFFICER RENAUD: Okay. Good, so yeah
24 biological and cultural were the next two on my list.
25 And the way it reads from here it's that Petitioner

1 didn't think there was any issues (indiscernible)
2 staff didn't (indiscernible) we need to figure out
3 what they were. But it sounds like maybe you've
4 gotten those sorted out.

5 Just to summarize the biological one was the
6 division of duties between the designated biologist
7 and the biological monitor. So that's all worked out
8 as far as you two are concerned?

9 MR. MCKINSEY: Correct. The staff proposed
10 (indiscernible) conditions (indiscernible) the entire
11 biological section of the FSA is acceptable to the
12 Project Owner.

13 HEARING OFFICER RENAUD: All right, and then
14 on -- I'm sorry.

15 MS. MILLER: Well, I was just going to say
16 that's great. Thank you. We're happy.

17 HEARING OFFICER RENAUD: Good and then for
18 cultural it was CUL-6 and that was pretty much, that
19 was really about the times that monitoring would be
20 required. And is that --

21 MR. MCKINSEY: And that's the same --

22 HEARING OFFICER RENAUD: We're good there?

23 MR. MCKINSEY: -- the same, the staff's
24 testimony on cultural of the FSA is (indiscernible)

25 HEARING OFFICER RENAUD: Well, that's great.

1 Okay, we don't have anything to talk about there.

2 Thank you.

3 All right, now what that all means -- unless
4 I've missed any disputed issues that we need to talk
5 about -- I don't think I have, but if there are
6 please bring it up now.

7 MS. MILLER: I don't think we've talked about
8 CONTINGENCY-4?

9 HEARING OFFICER RENAUD: I think it was part
10 of the same discussion as 1 and 2, but --

11 MS. MILLER: We didn't -- we may have had
12 this discussion, but I (indiscernible)

13 HEARING OFFICER RENAUD: Yeah, talk about if
14 you need to.

15 MR. MCKINSEY: It is -- it falls under that
16 same category for us of it's another condition that's
17 related to the demolition of 3 and 4. And it was a
18 response from the staff to our testimony, but mostly
19 it all falls into that same CONTINGENCY
20 (indiscernible) and that falls in the latter category
21 regarding requirement to submit plans and things,
22 which is never going to be nearly the issue that
23 CONTINGENCY (indiscernible)

24 HEARING OFFICER RENAUD: Okay. Yeah, that
25 makes sense to me. Does that make sense to you too?

1 MS. MILLER: Absolutely.

2 HEARING OFFICER RENAUD: Okay, good.

3 All right, well then to summarize what we
4 have wound up with is some disputed areas that it
5 sounds like you are making progress in working out.
6 And to the extent you are unable to come to a
7 resolution we can certainly deal with those at the
8 Evidentiary Hearing with your testimony and the
9 Committee will take it from there.

10 What this means is as to chapters
11 (indiscernible) in what would be a PMPD, Presiding
12 Member's Proposed Decision, we have 20 chapters --
13 count them, 20 -- on which there is no dispute and no
14 need for testimony. And just for the record I will
15 recite those.

16 That would be: the executive summary,
17 introduction, project description, land use, noise,
18 public health, socio-economics, soil and water
19 resources, traffic and transportation, transmission
20 line safety and nuisance, official resources,
21 hazardous materials, management subject to HAV-5 --
22 but I think that was good there, right? -- waste
23 management, worker safety and fire protection,
24 facility design, geology and paleontology,
25 efficiency, reliability, transmission system

1 engineering and alternatives. Okay?

2 Good, so I get agreement from the parties
3 that in those areas all testimony will be submitted
4 by declaration and that live witnesses need not be
5 present and need not be subjected to direct and
6 cross-examination? As we will note today.

7 MR. MCKINSEY: One comment I might make,
8 because we're going to have an Evidentiary Hearing at
9 the local community I think the one topic area that
10 is almost always advisable to have witnesses
11 available for, and perhaps a presentation from Air
12 Quality and Public Health -- and we've never had a
13 hearing in El Segundo that didn't at least attract
14 community members wanting to hear more about that.

15 And so other than that I think
16 (indiscernible) Project Owner agrees completely. And
17 I think even that's a discretionary decision of the
18 Committee that I would just call to your attention.

19 HEARING OFFICER RENAUD: Yeah, in fact this
20 is all discretionary. The stipulation would simply be
21 that you don't have to bring witnesses, but if you
22 want to you can.

23 So and I'm hearing some agreement over here
24 from Commissioner Douglas that the Air Quality,
25 Public Health would be a good idea for the sake of

1 members of the public who attend, so that all sounds
2 good.

3 Thank you, all right.

4 MS. MILLER: Thank you. I would agree that we
5 should have Air Quality staff. I would ask the
6 Committee to identify whether Air Quality staff need
7 to be present and do what Mr. McKinsey suggested and
8 do like a presentation or if they should be available
9 by phone. We can accommodate either, the Committee.

10 And while you're (indiscernible) see you
11 thinking -- I also wanted to highlight that we didn't
12 hear you list off biology or (indiscernible)
13 resources and cultural resources, which we identified
14 today as having no dispute. And I'm smiling
15 (indiscernible)

16 (Laughter.)

17 HEARING OFFICER RENAUD: Thank you. Yes,
18 you're right. Since I had on my list questions about
19 (indiscernible) cultural I didn't include them, but
20 you're right I can now include them. So that makes
21 the count 22.

22 MR. MCKINSEY: The Project Owner is in
23 agreement with that.

24 HEARING OFFICER RENAUD: Good. As far as the
25 telephone testimony that's fine.

1 MS. MILLER: Thank you.

2 HEARING OFFICER RENAUD: Yeah, okay, very
3 good.

4 The exhibit lists, now you both submitted
5 exhibit lists. And I mentioned at the outset that you
6 had a question about the staff's exhibit list?

7 MS. MILLER: Yeah.

8 HEARING OFFICER RENAUD: And I have now
9 figured out what the question was.

10 MS. MILLER: Can I say -- jump ahead and say
11 there is an inner (indiscernible)

12 HEARING OFFICER RENAUD: Okay, you found it.
13 yeah.

14 MS. MILLER: I did.

15 HEARING OFFICER RENAUD: It's on 2004 is
16 listed twice I think is what it is.

17 MS. MILLER: (Indiscernible) 2003 has two
18 different exhibits, both assigned to Exhibit Number
19 2003.

20 HEARING OFFICER RENAUD: Okay, so just let's
21 sort that out now, which is -- where do you want
22 that?

23 MS. MILLER: I can suggest that we add either
24 an "A" to 2003, the second one, or make them 2003A
25 and 2003B.

1 HEARING OFFICER RENAUD: Well, A would be --
2 it says "Energy Commission Staff's Rebuttal
3 Testimony"?

4 MS. MILLER: Correct, TN Number 206389.

5 HEARING OFFICER RENAUD: Well, since it's
6 not at all related to the FDOC, which would be "B" I
7 would like to suggest that we give it Exhibit Number
8 2008. Would that be all right?

9 MS. MILLER: That's fine.

10 HEARING OFFICER RENAUD: Okay.

11 MS. MILLER: And to reiterate you've asked
12 that we add the Coastal Commission Letter, so that
13 would bring us up to --

14 HEARING OFFICER RENAUD: Right. Okay, so
15 actually I did numbers for those already didn't I?
16 Thank you.

17 MS. MILLER: I don't have numbers indicated
18 for the Coastal Commission Letter.

19 HEARING OFFICER RENAUD: No, I didn't. Okay,
20 so we're good there. So the former 2003 will be 2008?

21 MS. MILLER: Correct.

22 HEARING OFFICER RENAUD: The one that's
23 called --

24 MS. MILLER: Number 206389.

25 HEARING OFFICER RENAUD: Yes, Staff's
CALIFORNIA REPORTING, LLC
52 Longwood Drive, San Rafael, California 94901 (415) 457-4417

1 Rebuttal Testimony right, will now be 2008.

2 And then let's make the Coastal Commission Letter
3 2009 and the Water Letter 2010, okay?

4 MS. MILLER: Yes.

5 HEARING OFFICER RENAUD: Good. All right, so
6 that's all I have on exhibit lists. Anybody else?

7 (No audible response.)

8 No? Okay. Witnesses, so we've already
9 discussed witnesses to the extent that the Air and
10 Public Health witnesses will testify by telephone, if
11 desired, is fine with the Committee.

12 Will -- I guess at this point you're not
13 certain whether or not you're going to need to call
14 any other witnesses, because you still have some
15 issues to work out? And only if they're still in
16 dispute would you need to call witnesses, right?

17 MS. MILLER: I would agree with that for now.

18 HEARING OFFICER RENAUD: All right. The way
19 it looks to me like even if you don't resolve
20 anything else we're only looking at a very small
21 number of witnesses, right? So I mean I don't see
22 that it's really productive to try and work out a
23 schedule of who will show up at what time and so on.
24 A) because we don't who and B) even if we did we'd be
25 talking about a matter of half an hour or less. So I

1 think we'll just leave that open.

2 Yeah, you can surprise us as far as I'm
3 concerned, okay? Really, I mean it's -- we'll just
4 see where we are, but I really don't think there's
5 going to be any --

6 MS. MILLER: For the record, I'd rather not
7 have surprises, Mr. McKinsey.

8 MR. MCKINSEY: We're in complete agreement on
9 that part.

10 MS. MILLER: Thank you.

11 HEARING OFFICER RENAUD: All right. Yeah, I
12 didn't mean like ambush. But just if you do need to
13 bring in witnesses on topics that you've discussed
14 and have been unable to resolve, do so. If you want
15 to docket a memo or something saying that's the plan
16 that would be fine. In fact, I kind of like that
17 idea, so why don't you just plan to do that.

18 Okay. All right, briefing. Does anybody
19 foresee any need for briefing? Even if you say no
20 now, if later on you decide you'd like to brief
21 something usually we'll allow that. But at this point
22 are you seeing anything we ought to schedule a
23 briefing for?

24 MR. MCKINSEY: No. I don't see anything at
25 this time.

1 HEARING OFFICER RENAUD: All right, good.

2 Let's see...all right, just one moment please. Okay.

3 Is there anything else we have to discuss here?

4 (No response.)

5 The Committee will issue a Hearing Order in
6 this time, hopefully in the next week or so, which
7 will pretty much summarize what we've gone over
8 today. And just sort of set out the details for the
9 Evidentiary Hearing to the extent they aren't in the
10 Notice.

11 The Evidentiary Hearing is scheduled for
12 11:00 a.m. November 17th, Embassy Suites South LAX in
13 El Segundo.

14 That's all I have to say. We have next on
15 the agenda, public comment. Is there anyone in the
16 room who would like to make a public comment?

17 (No response.)

18 Okay. I see we do have a few people calling
19 in. Is there anyone who's called in who would like to
20 make a public comment? If so, please go ahead.

21 (No response.)

22 I don't hear anybody wanting to make a
23 public comment.

24 All right, very good. Commissioners, any
25 closing remarks?

1 COMMISSIONER DOUGLAS: I'd just like to thank
2 the parties for being very organized for this
3 Prehearing Conference. That was very helpful, so I'll
4 look forward to seeing you at the Evidentiary
5 Hearings and with that we're adjourned.

6 HEARING OFFICER RENAUD: Thank you.

7 (Adjourned at 2:57 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25